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agreement to merge the lien, equity will keep it alive or destroy it as appears to be to the interest of the purchaser. It will not destroy it if there is any necessity for keeping it alive, such as the existence of another encumbrance, in the absence of an agreement to that effect.

GARBER v. SUTTON.—Decided at Richmond, November 17, 1898.—

Harrison, J. Absent, Riely and Cardwell, JJ:

1. **RESCSSION**—*Encumbrances—Discharge before vendee entitled to deed—Depreciation in value.* The existence of encumbrances on real estate prior to the time when the vendee has the right to demand a deed, but which are discharged by that time, is no ground for rescinding the contract of purchase, nor is the depreciation in the value of the property between the date of sale and the time when the vendee has the right to call for the title good ground for rescission.

2. **STREETS AND ALLEYS**—*Reserved to purchasers—Subsequent closing.* The use of streets and alleys shown on plats exhibited to purchasers and reserved for their use and benefit is unaffected by subsequent deeds of trust made by their vendor, and cannot be closed to their detriment without their consent.

BEATY v. DOWNING AND OTHERS.—Decided at Richmond, November 17, 1898.—*Buchanan, J. Absent, Riely and Cardwell, JJ:*

1. **CHANCERY PLEADING AND PRACTICE**—*Suit by legatee or creditor against personal representative and debtor—When allowed.* Neither a legatee nor a creditor of a decedent can maintain a suit against his personal representative and another who is a debtor to the estate for the purpose of collecting the debt except under special circumstances, such as the insolvency of the personal representative; collusion between him and the debtor; the fact that the debtor was a partner of the decedent; or a trustee holding property for, or an agent of, the decedent. A bill which fails to charge these or other special circumstances which will take the case out of the general rule is bad on demurrer.

2. **PERSONAL REPRESENTATIVES**—*Insurance on decedent's life held by third party—Excess over debt—Duty of representative—Account.* If a third party holding a policy of insurance on the life of a decedent collects and retains more on account of it than he is entitled to under the law, it is the duty of the administrator to require him to account for the excess, and if, through his failure to do so, any loss has resulted to the estate of the decedent the administrator should be charged with such loss in his administration account.

3. **CHANCERY PLEADING AND PRACTICE**—*Dismissal without prejudice—Personal representatives—Account.* The dismissal of a suit in chancery brought by a legatee of a decedent against his personal representative and a debtor of the estate for the purpose of holding the debtor to account, while a separate suit is pending against the personal representative for the settlement of his account, should be without prejudice to the right of the legatee to have the personal representative charged in the other suit with any sum which it was his duty to collect but which he had failed to collect of the debtor.